IN THE HIGH COURT OF JUDICATURE AT MADRAS

Dated: 4.7.2006

Coram:

The Hon'ble Mr.JUSTICE S.RAJESWARAN

C.R.P.(PD) No.2786 of 2003

1.Mariyaee

2.Minor Gowri aged 15 years .. Petitioners

vs.

1.Pappammal
2.R.Devakar
3.United India Insurance Co.Ltd.
I Floor, 50A, Pallivasal Street
Perambalur

.. Respondents

C. Revision Petition filed under Article 227 of the Constitution of India against the order dated 14.11.2003, passed in I.A.No.1141/2003 in M.C.O.P.No.737/2000, on the file of the Court of Motor Accidents Claims Tribunal and District Judge, Perambalur.

For Petitioner : M/s.G.R.Swaminathan
For Respondents : Mr.P.K.Jamal Mohammed

ORDER:

This Revision Petition has been filed against the order dated 14.11.2003, passed in I.A.No.1141/2003 in M.C.O.P.No.737/2000, on the file of the Court of Motor Accident Claims Tribunal and District Judge, Perambalur.

2. The unsuccessful proposed parties who filed I.A.No.1141/2003 in M.C.O.P.No.737/2000 are the Revision Petitioners.

3. The Revision Petitioners filed I.A.No.1141/2003 under Order 1 Rule 10(2) of the Code of Civil Procedure to implead themselves in the main petition filed by 1st respondent herein for claiming compensation for the death of her (1st respondent) husband, by contending that they are the daughter-in-law and grand-daughter of the deceased

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husband of the 1st respondent herein. It was resisted by the 1st respondent (claimant) on the ground that her son Gandhi died on 26.10.1996, long after the death of her husband who died on 11.1.1990 and therefore they are not dependents of her deceased husband.

4. The trial court accepted this contention and also held that the revision petitioners are not class I heirs of the deceased and the petition has been filed belatedly after a lapse of 12 years from the date of death of the husband of the 1st respondent herein. Aggrieved by this order, the above revision petition has been filed.

5. Heard the learned counsel for the revision petitioners and the learned counsel for the respondents.

6. Section 166 of the Motor Vehicles Act, 1988 deals with the filing of an application arising out of an accident. Sec.166 is extracted for better appreciation:-

> "166. Application for compensation:- (1) An application for compensation arising out of an accident of the nature specified in sub-section (1) of Section 165 may be made-
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> (a) by the person who has sustained the injury; or
>
> (b) by the owner of the property; or
>
> (c) where death has resulted from the accident, by all or any of the legal representatives of the deceased, as the case may be; or
>
> (d) by any agent duly authorised by the person injured or all or any of the legal representatives of the deceased, as the case may be:
>
> Provided that where all the legal representatives of the deceased have not joined in any such application for compensation, the application shall be made on behalf of or for the benefit of all the legal representatives of the deceased and the legal representatives who have not so joined, shall be impleaded as respondents to the application.
>
> (2) Every application under sub-section (1) shall be made, at the option of the claimant, either to the Claims

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Tribunal having jurisdiction over the area in which the accident occurred, or to the Claims Tribunal within the local limits of whose jurisdiction the claimant resides or carries on business or within the local limits of whose jurisdiction the defendant resides, and shall be in such form and contain such particulars as may be prescribed:

Provided that where no claim for compensation under Section 140 is made in such application, the application shall contain a separate statement to that effect immediately before the signature of the applicant

(3) ***

(4) The Claims Tribunal shall treat any report of accidents forwarded to it under sub-section (6) of Section 158 as an application for compensation under this Act."

7. Every Legal Representative who suffers on account of death of a person due to motor vehicle accident should have a remedy for realisation of compensation and that is provided by sub-clause 1(c) and (d) of Sec.166 of the Motor Vehicles Act, 1988. It is for the tribunal to determine the compensation which appears to be just and to specify the person or persons to whom compensation shall be paid. The said Section contains a proviso, which says that where all the legal representatives of the deceased have not joined in any such application for compensation, the application shall be made on behalf of or for the benefit of all the legal representatives of the deceased (emphasis supplied) and the legal representatives who have not so joined shall be impleaded as respondents to the application. This proviso to Sec.166 has been introduced obviously for the purpose of avoiding multifarious claims in respect of the same accident. If one of the main legal representatives can file a claim petition without reference to others then there is a possibility of many claim petitions being filed in respect of the same accident. It is with a view to avoid such a situation and also to ensure that one legal representative does not get the compensation and run away with it without the knowledge of the other legal representatives the proviso has been introduced.

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8. Therefore the order of the tribunal is patently wrong as the same is not in consonance with the letter and spirit of Sec.166 of the Act, 1988 and the tribunal ought not to have rejected the impleading petition on the basis of limitation and dependency.

9. Hence the order of the tribunal dated 14.11.2003 is set aside and the tribunal is directed to implead the revision petitioners in M.C.O.P.No.737/2000 and proceed to determine the compensation in accordance with law.

10. Considering the fact that the accident took place on 11.1.90 and the claim petition was taken on file in the year 2000, it is appropriate to direct the tribunal to dispose of M.C.O.P.No.737/2000 within three months from the date of receipt of copy of this order preferably on day-to-day basis. In the result this Civil Revision Petition is allowed. No costs. C.M.P.No.21038/2003 is closed.

sks

Sd/
Asst.Registrar

/true copy/

Sub Asst.Registrar

To

The District Judge
The Motor Accidents Claims Tribunal
Perambalur.

Copy to:
The Section Officer,
VR Section, High Court, Madras

+ one cc to Mr. G.R. Swaminathan, Advocate sr no. 29017

TEJ(CO)
NM(13.07.2006)

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